

873—4.28(17A,86) Scope of appeal. The commissioner shall decide an appeal upon the record submitted to the deputy industrial commissioner unless the commissioner is satisfied that there exists additional material evidence, newly discovered, which could not with reasonable diligence be discovered and produced at the hearing. A request for the taking of additional evidence must be filed with the industrial commissioner within 20 days of the filing of the appeal. Any briefs required or allowed by this rule shall be filed promptly following service.

4.28(1) Time for serving briefs. Appellant shall serve its brief within 50 days after the date on which notice of appeal was filed, or within 20 days after filing of the hearing transcript, whichever date is later. Appellee shall serve its brief within 20 days after service of the brief of appellant. If appellant serves a reply brief, it shall be done within 10 days after service of appellee's brief.

4.28(2) Cross-appeals. In the event of a cross-appeal, appellee (cross-appellant) shall serve its brief within 20 days after service of the brief of appellant. Appellant (cross-appellee) shall serve its responsive reply brief within 20 days after service of the brief of appellee. Appellee (cross-appellant) may serve a reply brief within 10 days after service of appellant's reply brief. When both parties appeal, the first to serve notice of appeal shall be appellant unless both serve their notice on the same date, in which case the claimant shall be appellant.

4.28(3) Multiple adverse parties. In cases involving multiple appeals involving multiple claimants, employers, insurance carriers or the second injury fund, the industrial commissioner shall enter an order establishing a briefing schedule.

4.28(4) Form of briefs. Respective briefs and exceptions on appeal shall include the following:

- a. Statement of the case.
- b. Statement of the issues on appeal.
- c. An argument corresponding to the separately stated issues and contentions of appellant with respect to the issues presented and reasons for them, with specific reference to the page or pages of the transcript which are material to the issues on appeal.
- d. A short conclusion stating the precise relief sought.

The appellee shall submit a brief on appeal replying to the issues presented by the appellant, unless a cross-appeal is made in which case the brief of appellee shall contain the issues and argument involved in the cross-appeal as well as the response to the brief of appellant. The appeal shall be decided on the issues presented by the appellant and appellee, including those matters raised by way of cross-appeal except as provided in 4.29(86,17A).

The failure of the appellant or appellee to conform to this rule may result in sanctions as provided in 4.36(86).

4.28(5) Length of briefs. See rule 4.45(17A,86).

This rule is intended to implement Iowa Code section 86.24.